

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ALPHONSO BOUTIRE,
Plaintiff,

v.

Case No. 12-cv-14611
Honorable Patrick J. Duggan

LAKREESE R. JOHNSON and
GERALD MITCHELL,
Defendants.

**OPINION AND ORDER GRANTING
DEFENDANT MITCHELL'S MOTION FOR SUMMARY JUDGMENT
AND DEFENDANT JOHNSON'S MOTION TO DISMISS**

Plaintiff initiated this lawsuit against Defendants on October 18, 2012, alleging violations of his Eighth Amendment rights while he was a Michigan Department of Corrections' inmate. On January 4, 2013, Defendant Mitchell filed a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. On May 2, 2013, Defendant Johnson filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). This Court has referred the matter to Magistrate Judge Charles Binder for all pretrial proceedings, including a report and recommendation ("R&R") on all dispositive motions pursuant to 28 U.S.C. § 636(b)(1)(B). (ECF No. 16.) On June 27, 2013, Magistrate Judge Binder issued his R&R recommending that this Court grant Defendants' motions. (ECF No. 31.)

In his R&R, Magistrate Judge Binder applies the standard for review under

Rule 12(b)(6) and concludes that Plaintiff fails to state a viable Eighth Amendment claim. (*Id.* at 6-8.) At the conclusion of his R&R, Magistrate Judge Binder advises the parties that they may object to and seek review of the R&R within fourteen days of service upon them. (*Id.* at 9.) He further specifically advises the parties that “[f]ailure to file specific objections constitutes a waiver of any further right to appeal.” (*Id.* at 9.) Neither party filed objections to the R&R.

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Binder. The Court therefore adopts the R&R.

Accordingly,

IT IS ORDERED that Defendant Gerald Mitchell’s motion for summary judgment (ECF No. 15) is **GRANTED**;

IT IS FURTHER ORDERED, that Defendant Lakreese R. Johnson’s motion to dismiss (ECF No. 29) is **GRANTED**.

Dated: August 12, 2013

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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